



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2013-0762; FRL-9906-04-Region 9]

Approval and Promulgation of Implementation Plans – Maricopa County PM-10 Nonattainment Area; Five Percent Plan for Attainment of the 24-Hour PM-10 Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Arizona to meet Clean Air Act (CAA) requirements applicable to the Maricopa County (Phoenix) PM-10 Nonattainment Area. The Maricopa County PM-10 Nonattainment Area is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, several other smaller jurisdictions, unincorporated County lands, as well as the town of Apache Junction in Pinal County. The Maricopa County PM-10 Nonattainment Area is designated as a serious nonattainment area for the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM-10). The submitted SIP revision is the *Maricopa Association of Governments Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* (2012 Five Percent Plan). Arizona's obligation to submit the 2012 Five Percent Plan was triggered by EPA's June 6, 2007 finding that the Maricopa PM-10 Nonattainment Area had failed to meet its December 31, 2006 deadline to attain the PM-10 NAAQS. The CAA requires a serious PM-10 nonattainment area that fails to meet its attainment deadline to submit a plan providing for attainment of the PM-10

NAAQS and for an annual emission reduction in PM-10 or PM-10 precursors of not less than five percent until attainment. EPA is proposing to approve the 2012 Five Percent Plan as meeting all relevant statutory and regulatory requirements.

DATES: Any comments must arrive by [Insert date 30 days from the date of publication in the Federal Register].

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2013-0762, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.
2. E-mail: nudd.gregory@epa.gov.
3. Mail or deliver: Gregory Nudd (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical

difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Gregory Nudd, U.S. EPA Region 9, 415-947-4107, nudd.gregory@epa.gov or www.epa.gov/region09/air/actions.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” mean U.S. EPA.

Table of Contents

- I. PM-10 Air Quality Planning in the Maricopa PM-10 Non-Attainment Area.
- II. Overview of Applicable CAA Requirements
- III. Evaluation of the 2012 Five Percent Plan’s Compliance with CAA Requirements
- IV. Summary of Proposed Actions
- V. Statutory and Executive Order Reviews

I. PM-10 Air Quality Planning in the Maricopa PM-10 Non-Attainment Area.

The NAAQS are standards for certain ambient air pollutants set by EPA to protect public health and welfare. PM-10 is among the ambient air pollutants for which EPA has established health-based standards. PM-10 causes adverse health effects by penetrating deep in the lungs, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 EPA revised the health-based national ambient air quality standards, replacing the standards for total suspended particulates with new standards applying only to particulate matter up to ten microns in diameter (PM-10). 52 FR 24672. At that time, EPA established two PM-10 standards, annual and 24-hour. Effective December 18, 2006, EPA revoked the annual PM-10 standard but retained the 24-hour PM-10 standard. 71 FR 61144 (October 17, 2006). The 24-hour PM-10 standard of 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) is attained when the expected number of days with a 24-hour average concentration above 150 $\mu\text{g}/\text{m}^3$ per calendar year averaged over a three year period, as determined in accordance with appendix K to 40 CFR part 50, is equal to or less than one. 40 CFR 50.6 and 40 CFR part 50, appendix K.

On the date of enactment of the 1990 Clean Air Act Amendments (CAA or the Act), many areas, including the Maricopa PM-10 Nonattainment Area, meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. 56 FR 11101 (March 15, 1991). The Maricopa PM-10 Nonattainment Area is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, as well as 15 other jurisdictions, four tribes and unincorporated County lands. The nonattainment area also includes the town of Apache Junction in Pinal County. EPA codified the boundaries of the Maricopa PM-10 Nonattainment Area at 40 CFR 81.303.

Once an area is designated nonattainment for PM-10, section 188 of the CAA outlines the process for classifying the area as moderate or serious and establishes the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM-10 nonattainment areas, including the Maricopa PM-10 Nonattainment Area, were initially classified as moderate.

A moderate PM-10 nonattainment area must be reclassified to serious PM-10 nonattainment by operation of law if EPA determines after the applicable attainment date that, based on air quality, the area failed to attain by that date. CAA sections 179(c) and 188(b)(2). On May 10, 1996, EPA reclassified the Maricopa PM-10 Nonattainment Area as a serious PM-10 nonattainment area. 61 FR 21372.

As a serious PM-10 nonattainment area, the area acquired a new attainment deadline of no later than December 31, 2001. CAA section 188(c)(2). However, CAA section 188(e) authorizes EPA to grant up to a 5-year extension of that attainment deadline if certain conditions are met by the state. In order to obtain the extension, the state must make a SIP submission showing that: (1) attainment by the applicable attainment date would be impracticable; (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area; and (3) the plan for the area includes the most stringent measures (MSM) that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the specific area. Arizona requested an attainment date extension under CAA section 188(e) for the Maricopa PM-10 Nonattainment Area from December 31, 2001 to December 31, 2006.

On July 25, 2002, EPA approved the serious area PM-10 plan for the Maricopa PM-10 Nonattainment Area as meeting the requirements for such areas in CAA sections 189(b) and (c), including the requirements for implementation of best available control measures (BACM) in

section 189(b)(1)(B) and MSM in section 188(e). In the same action, EPA approved the submission with respect to the requirements of section 188(e) and granted Arizona's request to extend the attainment date for the area to December 31, 2006. 67 FR 48718. This final action, as well as the two proposals preceding it, provide a more detailed discussion of the history of PM-10 planning in the Maricopa PM-10 Nonattainment Area. *See* 67 FR 48718 (July 25, 2002); 65 FR 19964 (April 13, 2000); and 66 FR 50252 (October 2, 2001).

On June 6, 2007, EPA found that the Maricopa PM-10 Nonattainment Area failed to attain the 24-hour PM-10 NAAQS by the applicable attainment date of December 31, 2006 (72 FR 31183). Accordingly, the state was required to submit a new plan meeting the requirements of section 189(d) by December 31, 2007.

On December 19, 2007, the Maricopa Association of Governments (MAG) adopted the “MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area” (2007 Five Percent Plan).¹ On December 21, 2007 the Arizona Department of Environmental Quality (ADEQ) submitted the 2007 Five Percent Plan and two Pinal County resolutions. EPA proposed to partially disapprove this plan on September 9, 2010. 75 FR 54806. On January 25, 2011, prior to EPA’s final action on the 2007 Five Percent Plan, Arizona withdrew the plan from the Agency’s consideration. As a result of the withdrawal of the 2007 Five Percent Plan, on February 14, 2011, EPA made a finding of failure to make a required SIP submittal. 76 FR 8300. This finding of failure to submit obligated EPA to promulgate a federal implementation plan (FIP) within two years after that date, unless the state submits and EPA approves a SIP submission meeting the requirements of section 189(d) by such date. CAA section 110(c).

¹ MAG has responsibility for air quality and transportation planning in the metropolitan Phoenix region. MAG develops air quality plans in coordination with ADEQ, the Arizona Department of Transportation, and the Maricopa County Air Quality Department. *See* 2012 Five Percent Plan at ES-1; Appendix E., Exh. 2 (Resolution to Adopt the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area).

Because EPA's evaluation of the 2012 Five Percent Plan indicates that it meets the requirements of section 189(d), EPA is proposing to approve the submission in today's action.

The 2012 Five Percent Plan was adopted by MAG on May 23, 2012 and submitted to EPA by ADEQ on May 25, 2012.² MAG adopted and ADEQ submitted the 2012 Five Percent Plan specifically to address the CAA requirements in section 189(d) for the Maricopa PM-10 Nonattainment Area. EPA reviewed the submission and found it to be complete on July 20, 2012.³ EPA is proposing approval of the submission as meeting the requirements of section 189(d) in today's action.

II. Overview of Applicable CAA Requirements

As a serious PM-10 nonattainment area that failed to meet its applicable attainment date, December 31, 2006, the Maricopa PM-10 Nonattainment Area is subject to CAA section 189(d). Section 189(d) provides that the state shall "submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction of PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for the area."

The general planning and control requirements for all nonattainment plans are found in CAA sections 110 and 172. More specific planning and control requirements relevant to the PM-10 NAAQS are found in Part D, Subpart 4, in CAA sections 188 and 189. EPA has issued a

² Also on May 25, 2012, Arizona submitted several Arizona statutes, Maricopa County rules, a Maricopa County ordinance, and related appendices for approval into the Arizona SIP. By letter dated May 21, 2013, Arizona submitted redacted materials to clarify its May 25, 2012 submittal. By letter dated September 26, 2013, Arizona withdrew its May 21, 2013 submittal and submitted a table and redacted materials as a supplement to the May 25, 2012 submittal to clarify the materials it is requesting EPA to approve into the Arizona SIP.

³ Letter from Deborah Jordan, Director, Air Division, USEPA Region 9 to Henry Darwin, Director, Arizona Department of Environmental Quality dated July 20, 2012.

General Preamble⁴ and Addendum to the General Preamble⁵ to provide guidance to states for meeting the CAA's requirements for the PM-10 NAAQS. The General Preamble mainly addresses the requirements for moderate nonattainment areas and the Addendum addresses the requirements for serious nonattainment areas. EPA has also issued other guidance documents related to PM-10 plans which are discussed and cited below. The specific PM-10 plan requirements addressed by this proposed action are summarized below.

A. Emissions Inventories

CAA section 172(c)(3) requires that an attainment plan include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutants.

B. Section 189(d) Attainment Demonstration and Five Percent Requirement

For serious PM-10 nonattainment areas that do not attain the PM-10 NAAQS by the applicable attainment date, CAA section 189(d) requires the state to submit plan revisions that provide for attainment of the NAAQS (i.e., an attainment demonstration) and provide for an annual five percent reduction in PM-10 or PM-10 precursor emissions for each year from the date of submission until attainment.⁶ Section 189(d) specifies that the state must submit these plan revisions within 12 months of the applicable attainment date that the area failed to meet.

⁴ “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13498 (April 16, 1992) (General Preamble) and 57 FR 18070 (April 28, 1992).

⁵ “State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 59 FR 41998 (August 16, 1994) (Addendum).

⁶ EPA has previously determined that PM-10 precursors are not significant contributors to PM-10 levels in the Maricopa County PM-10 Nonattainment Area. See 65 FR 19971 (April 13, 2000); 67 FR 48718 (July 25, 2002). In those rulemaking notices, EPA specifically determined that the contribution from major stationary sources of PM-10 precursors was less than 0.5 percent of the annual PM-10 NAAQS. *See e.g.*, 65 FR 19971. Subsequent technical studies confirm that ambient PM-10 levels in the nonattainment area are primarily from crustal material and are not derived from organic compounds, nitrates or sulfates. *See e.g.*, “PM-10 Source Attribution and Deposition Study,” prepared by Sierra Research, Inc. for Maricopa Association of Governments (March 2008) at pg. 2 (“Local monitoring by co-located PM-10 and PM-2.5 monitors confirms that PM-2.5 on high PM-10 days is a small fraction

C. Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) requires that implementation plans demonstrate reasonable further progress (RFP) as defined in section 171(1). Section 171(1) defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." The general RFP requirement of section 172(c)(2) applies to SIP submissions necessary to meet CAA section 189(d) for the PM-10 NAAQS.

In addition, CAA section 189(c)(1) specifically applicable to the PM-10 NAAQS requires that an implementation plan contain quantitative milestones which will be achieved every 3 years and which will demonstrate that RFP is being met.

D. Contingency Measures

CAA section 172(c)(9) requires that implementation plans provide for "the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the NAAQS by the attainment date applicable under this part [part D of title I]. Such measures are to take effect in any such case without further action by the State or the Administrator." The contingency measure requirement of CAA section 179(c)(9) applies to the SIP submissions necessary to meet CAA section 189(d) for the PM-10 NAAQS.

E. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining

of the PM-10 concentrations. Therefore, the PM-10 problem in the Maricopa County nonattainment area is largely attributable to coarse particles, comprised primarily of geologic material."); *see also, id.* at Chapter 3.

whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestone. Once a SIP that contains motor vehicle emissions budgets (MVEBs) has been submitted to EPA, and EPA has found them adequate, these budgets are used for determining conformity: emissions from planned transportation activities must be less than or equal to the budgets.

F. Adequate Authority

CAA section 110(a)(2)(E)(i) requires that implementation plans provide necessary assurances that the state (or the general purpose local government or regional agency designated by the state for this purpose) will have adequate personnel, funding and authority under state law to carry out the requirements of such plan. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (51.230-51.232) and for resources in 40 CFR 51.280. States and responsible local agencies must also demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance.

III. Evaluation of the 2012 Five Percent Plan's Compliance with CAA Requirements

A. Emissions Inventories

CAA section 172(c)(3) requires all nonattainment area plans to include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area at issue. Our policies require that the inventory be fully documented. The 2012 Five Percent Plan uses the comprehensive "2008 PM-10 Periodic Emissions Inventory for Maricopa County, Revised 2011" (2008 PM-10 Inventory) as a starting point in the analysis.⁷

⁷ The 2008 PM-10 Inventory is included as Appendix A, Exhibit 1 to the 2012 Five Percent Plan. The 2008 PM-10 Inventory includes revisions made by MAG in 2011 to incorporate more recent vehicle registration data, and updated models and planning assumptions. *See* 2012 Five Percent Plan, Appendix B, Exh. 1, at II-10 to II-17.

The 2008 PM-10 Inventory was developed by the Maricopa County Air Quality Department (MCAQD) and the Maricopa Association of Governments (MAG) -- MCAQD prepared emission estimates for point sources and most area and nonroad mobile sources, and MAG prepared emission estimates for onroad mobile, biogenic and certain area and nonroad mobile sources. 2012 Five Percent Plan, Appendix A, Exhibit 1. The 2008 PM-10 Inventory was adjusted by MAG for economic and population changes to provide projected emissions inventories for 2007 through 2012. 2012 Five Percent Plan at p. 3-2; Appendix B, Exh. 1, Section II.

The 2008 PM-10 Inventory describes annual emissions from point, area, nonroad, on-road, and nonanthropogenic sources in the Maricopa County and the Pinal County portion of the nonattainment area.^{8,9} The 2008 PM-10 Inventory shows that the most significant sources of emissions in the Maricopa County Nonattainment Area are unpaved roads and alleys (21 percent), construction-related fugitive dust (17 percent), paved road dust (17 percent) and windblown dust (9 percent). 2012 Five Percent Plan, Table 5–3. The 2008 PM-10 Inventory and related inventories for 2007 through 2012 are well documented by documentation meeting our guidance criteria. *See* “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations”, EPA, August 2005 (2005 EI Guidance).

⁸ The 2008 PM-10 Inventory notes that Maricopa County is approximately 9,223 square miles, whereas the Maricopa County PM-10 Nonattainment Area is approximately 2,888 square miles. *See* 2012 Five Percent Plan at p. 3-2.

⁹ The 2008 PM-10 Inventory also references “typical daily emissions.” The 2012 Five Percent Plan does not rely on “typical daily emissions” for the attainment demonstration or the five percent reduction in annual emissions; therefore, we did not comprehensively analyze these values in connection with today’s proposed action.

The base year, 2008, is a reasonably current year, considering the length of time needed to develop an inventory, perform the modeling, develop and adopt control measures, and hold public hearings on such a large and technically-complex plan.

The MAG plan inventories are sufficiently comprehensive, covering all sources of PM-10 that have been found to be important sources of relevant emissions in this and other PM-10 nonattainment areas. The 2008 PM-10 Inventory includes emissions for certain PM-10 precursors (nitrogen oxides, sulfur dioxide, and ammonia). The 2007 – 2012 projected inventories based on the 2008 PM-10 Inventory do not include emissions of PM-10 precursors; however, EPA has previously determined that these precursors do not play a significant part in the PM-10 problems in the Maricopa County PM-10 Nonattainment Area. *See* 65 FR 19971 (April 13, 2000); *see also*, note 6. EPA proposes to find again that precursors still do not play a significant part in PM-10 problems in the Maricopa County PM-10 Nonattainment Area.

In developing the inventory, MAG and MCAQD followed EPA's 2005 guidance and recommendations regarding the use of emission factors, activity estimates, and control factors, and the other source specific emission estimation methodologies. The relative accuracy of each estimate underwent the prescribed quality assurance procedures, documented in the 2008 PM-10 Inventory, Sections 2.7, 3.7, 4.14 and 5.5, to minimize possible errors. MCAQD used reasonable and accurate methods to calculate rule effectiveness.

Rule effectiveness is the estimate of the extent to which a state rule in the SIP is achieving the intended reductions. A rule is 100 percent effective only if every impacted source is in compliance at all times. Often, rules are not 100 percent effective, and this aspect must be considered when calculating the emissions reductions from the rule. The 2008 PM-10 Inventory

generally complies with EPA's guidance on calculating rule effectiveness found in Appendix B of EPA's 2005 EI Guidance.

EPA's analysis indicates the inventory is sufficiently accurate for the purposes of the 2012 Five Percent Plan. Because we find that the inventory is current, comprehensive, and accurate, we propose to approve the 2008 PM-10 Inventory and the adjusted inventories for 2007, 2009, 2010, 2011 and 2012 under CAA section 172(c)(3).

B. Attainment Demonstration

EPA determines whether an area's air quality is meeting the PM-10 NAAQS based on complete, quality assured, and certified data collected at state and local air monitoring stations (SLAMS) in the nonattainment area. Attainment of the 24-hour PM-10 standard is determined by calculating the average number of expected exceedances of the standard over a three-year period. Specifically, the 24-hour PM-10 standard is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at each monitoring site within the nonattainment area.¹⁰ In the case of a monitor that collects daily data, and has a full three years worth of adequate data, that monitor should show no more than one exceedance of the standard in a three year period. If all of the monitors in the nonattainment area meet the standard for the requisite period reflecting the form of the 24 hour PM-10 NAAQS, then the area has attained the standard. This point is discussed in more detail in our technical support document (TSD).¹¹

1. Attainment Deadline

The 2012 Five Percent Plan predicts attainment of the PM-10 NAAQS by December 31, 2012. For an area determined by EPA to have failed to attain by the applicable attainment date

¹⁰ 40 CFR 50.6(a); 40 CFR part 50, Appendix K.

¹¹ Technical Support Document for EPA's Action on the 2012 Five Percent Plan, U.S. EPA Region 9, January 14, 2014, Section III.

for a serious PM-10 nonattainment area, CAA sections 172(a)(2) and 179(d)(3) specify that the new attainment date is as soon as practicable, but no later than 5 years from the date of publication of the nonattainment finding in the *Federal Register*. Pursuant to these provisions, the attainment date for the Maricopa PM-10 Nonattainment Area would be as expeditiously as practicable, but not later than June 6, 2012.¹² CAA section 172(a)(2), however, authorizes EPA to extend the attainment deadline to the extent it deems appropriate for a period no greater than 10 years from the publication of the nonattainment finding, “considering the severity of nonattainment and the availability and feasibility of pollution control measures.” EPA believes such an extension to December 31, 2012, is warranted, based on various factors, including the following.

First, EPA notes that the PM-10 NAAQS is an calendar-based standard, which makes setting a mid-year attainment deadline (such as June 6) less appropriate than setting an end of calendar year date that would include the entire year of monitored data for comparison against the NAAQS. In addition, the 2012 Five Percent Plan explains that an extension is reasonable because modeled attainment of the PM-10 NAAQS requires implementation of a new measure, the Dust Action General Permit. *See* 2012 Five Percent Plan at p. 6-45 through 6-47. The Dust Action General Permit is a new measure developed by ADEQ and MAG following EPA’s identification of approvability issues in the 2007 Five Percent Plan, including flaws in the emissions inventory. These flaws required Arizona and MAG to develop a new emissions inventory and new attainment demonstration and to convene technical and stakeholder groups for appropriate input. One result of these processes was the Dust Action General Permit, which identifies a series of Best Management Practices (BMPs) for specific dust generating operations. When ADEQ’s Maricopa County Dust Control Forecast predicts that a day is at high risk for

¹² *See* 72 FR 31183 (June 6, 2007).

dust generation, those dust generating operations that are not already required to control dust through a permit issued by the Arizona Department of Environmental Quality (ADEQ) or the Maricopa County Air Quality Department (MCAQD) are expected to choose and implement at least one BMP to reduce or prevent PM-10 emissions. The Dust Action General Permit required action by the Arizona Legislature and was not finalized until December 30, 2011.¹³ ADEQ and MAG estimate that the Dust Action General Permit will increase the rule effectiveness of Rule 310.01 by one percent on high wind days, or 190 tons on an annual basis. 2012 Five Percent Plan at p. 5-4 and p. 6-45. ADEQ and MAG also state that modeled attainment cannot be shown without the reductions attributable to the Dust Action General Permit. It was necessary to extend the attainment date until December 2012 in order for the Dust Action General Permit to be adopted and implemented.

For these reasons, EPA concurs that an extension of the attainment deadline to December 31, 2012 is warranted.

2. Modeled Attainment Demonstration

The 2012 Five Percent Plan shows attainment of the PM-10 NAAQS through modeled attainment demonstrations for the area near the Salt River in central Phoenix, (including the West 43rd Avenue monitor which recorded the most PM-10 exceedances during high wind conditions for the period 2005 - 2010) and for the entire Maricopa County PM-10 Nonattainment Area. *See generally*, 2012 Five Percent Plan, Chapter 6. MAG conducted modeling for two design days: May 4, 2007 (based on data from the West 43rd Avenue monitor), and June 6, 2007 (based on data from the Higley and West 43rd Avenue monitors). In consultation with ADEQ and EPA, MAG selected the design days and locations based on the fact that, for the past few years,

¹³ Arizona House Bill 2208, which added ARS 49-457.05 and authorized creation of the Dust Action General Permit, was enacted in April 2011.

measured exceedances of the PM-10 NAAQS have been associated with elevated winds. MAG's selected design days were not days that would be likely to be considered a high wind exceptional event (i.e., the geographic extent of the exceedances did not suggest the occurrence of an area-wide storm event). EPA's detailed analysis of the modeling can be found in Section IV of the TSD for this action. The modeling was conducted in a way that was consistent with EPA guidance and the input of EPA technical experts. The modeling indicates that the emission reductions in the plan should result in PM-10 levels that are consistent with the NAAQS by December 31, 2012. This attainment modeling was confirmed by the monitoring data as described in the next section of this proposal. Therefore, EPA proposes to find that the 2012 Five Percent Plan's attainment demonstration provides sufficient assurance that the control measures implemented in the nonattainment area will be sufficient to ensure ongoing compliance with the PM-10 standard in the Maricopa County PM-10 Nonattainment Area.

3. Monitoring Data Showing Attainment

EPA is also taking into account the fact that monitoring data recorded at air quality monitors throughout the Maricopa County PM-10 Nonattainment Area show that the area in fact reached attainment of the PM-10 NAAQS by December 31, 2012. Attainment of the 24-hour PM-10 standard is determined by calculating the average number of expected exceedances of the standard over a three-year period. Specifically, the 24-hour PM-10 standard is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at each monitoring site within the nonattainment area. During the 2010-2012 time period, MCAQD operated fifteen PM-10 monitors, while ADEQ and the Pinal County Air Quality Control District (PCAQCD) operated an additional three PM-10 monitoring stations in the area. EPA's analysis

indicates that all of these monitors have an expected exceedance of less than one for the years 2010-2012.

EPA's review of monitoring data for the 24-hour PM-10 NAAQS for the Maricopa County PM-10 Nonattainment Area includes exceedances of the standard recorded during the 2010 – 2012 time period. However, EPA does not consider these exceedances of the NAAQS to be violations because they were the result of exceptional events. ADEQ submitted three packages containing demonstrations for high wind PM-10 exceptional events covering a total of one hundred thirty-three measured exceedances occurring over twenty-seven days in the years 2011 and 2012 at monitors within the Maricopa County PM-10 Nonattainment Area. EPA reviewed the documentation that ADEQ provided to demonstrate that the exceedances on these days meet the criteria for an exceptional event in EPA's Exceptional Events Rule (EER).¹⁴ EPA concurred with ADEQ's requests for exceptional event determinations, based on the weight of evidence, that one hundred thirty-one of the one hundred thirty-three exceedances were caused by high wind exceptional events.¹⁵ Accordingly EPA has determined that the monitored exceedances associated with these exceptional events should not be used for regulatory purposes, including for evaluation of the CAA section 189(d) plan submission. Excluding these exceedances caused predominantly by uncontrollable emissions, EPA proposes to determine that the Maricopa County PM-10 Nonattainment Area has attained the 24-hour PM-10 NAAQS based on the monitors operated by ADEQ, MCAQD and PCAQD. This is consistent with attainment of the standard projected by the state in the 2012 Five Percent Plan.

Monitors operated by tribal governments in the nonattainment area also provide data that can be considered to evaluate attainment. The Salt River Pima-Maricopa Indian Community

¹⁴ 40 CFR 50.1(j), (k), (l); 50.14; 51.930.

¹⁵ See Letters from Jared Blumenfeld, Regional Administrator, EPA Region 9, to Eric Massey, Director, Air Division, ADEQ, dated September 6, 2012, May 6, 2013, and July 1, 2013.

operates three PM-10 monitoring stations on tribal land within the Maricopa County PM-10 Nonattainment Area that meet the requirements of 40 CFR part 58 and are therefore appropriate to consider when determining if the area has attained the standard. As our analysis in Section III of the TSD indicates, these monitors show exceedances of the standard on three days during the 2010-2012 time period. Two of those exceedances (both on July 8, 2011) were during area-wide storms that resulted in exceedances at the non-tribal monitors that EPA has already determined were caused by exceptional events. EPA TSD Section III. The third exceedance (on July 2, 2011) appears to be related to local sources rather than an exceptional event. Pursuant to 40 CFR 49.10, however, EPA cannot disapprove a state SIP submittal because of the “failure to address air resources within the exterior boundaries of an Indian Reservation or other areas within the jurisdiction of an Indian tribe.” Therefore, we did not further consider these exceedances as part of this proposed action to approve the 2012 Five Percent Plan.

The plan submitted by the state projected that the Maricopa County PM-10 Nonattainment Area would attain by December 31, 2012, because that was the most expeditious attainment date practicable considering the severity of nonattainment and the availability of controls in the area. Monitoring data for the years 2010-2012, taking into account EPA’s determinations with respect to exceptional events during that period, indicate that the area attained the standard as of December 31, 2012.¹⁶

EPA proposes to find that the 2012 Five Percent Plan meets the requirement to demonstrate attainment by the appropriate attainment date. This proposed finding is based on our

¹⁶ Additional exceedances of the PM-10 NAAQS occurred on six days between April and October 2013. Arizona has indicated its intent to submit documentation regarding these exceedances to EPA and to request that EPA concur with the state’s determination that they qualify as exceptional events. EPA will evaluate the state’s submissions and requests consistent with the EER and relevant guidance.

analysis of the modeling described in the plan and analysis of the monitoring data for the years 2010-2012.

C. Five Percent Requirement

CAA section 189(d) requires a state with a serious PM-10 nonattainment area that fails to attain the PM-10 NAAQS by the applicable attainment deadlines to submit within 12 months after the applicable attainment date plan revisions which provide an annual five percent reduction in emissions of PM-10 or PM-10 precursors in the area from the date of the submission until attainment, based on the most recent inventory.

The 2012 Five Percent Plan's demonstration of annual five percent reductions is found in Chapter 5. Arizona and MAG used the 2008 PM-10 Inventory as the "most recent inventory" and derived emissions levels for years 2007-2012 based upon the 2008 PM-10 Inventory. *See* Five Percent Plan at p. 5-4. The demonstration of annual five percent reductions uses 2007 as the baseline from which the five percent reductions are calculated and as point at which the reductions should start.¹⁷ The 2012 Five Percent Plan's demonstration is summarized in Table 1, below.

Table 1: 2012 Five Percent Plan Emissions by Year

¹⁷ EPA believes Arizona's use of 2007 as the baseline for five percent reductions is reasonable and consistent with Congress' intent. Section 189(d) states that plans are due *within 12 months of the missed attainment deadline* and that the plans should provide for annual five percent reductions *from the date of the submission until attainment*. Arizona's attainment deadline was December 31, 2006. 67 FR 48718 (July 25, 2002). Accordingly, a submittal to fulfill section 189(d) was due by December 31, 2007, and reductions should have begun to occur as of that date. *See* 72 FR 31183 (June 6, 2007). The decline in emissions from 2007 to 2008 shows that reductions did, in fact, begin to occur within that time frame. *See* Table 1. Arguably, these reductions occurred outside the literal time frame specified by Congress (i.e., "the date of the submission" of the plan) because the 2012 Five Percent Plan was not submitted until May 26, 2012. We note that Arizona had submitted the 2007 Five Percent Plan on December 21, 2007 (although it withdrew the plan on January 25, 2011). EPA believes that it is appropriate and consistent with Congress's intent for expeditious attainment of the NAAQS that we consider reductions that occurred prior to the submittal of the 2012 Five Percent Plan.

Year	2007	2008	2009	2010	2011	2012
Baseline Inventory¹⁸	59,218	56,681	52,123	50,497	49,743	49,673
Controlled Inventory¹⁹	59,218	49,231	45,600	44,062	43,438	43,130
Annual Reduction		9,987	3,631	1,538	624	308
Cumulative Reduction		9,987	13,618	15,156	15,780	16,088
Target Reduction		2,961	5,922	8,883	11,844	14,805

The “baseline inventory” values are derived from the 2008 PM-10 Inventory as adjusted by population and economic growth factors from the University of Arizona. *See* 2012 Five Percent Plan, at p. 5-4 and p. 5-5, Table 5-2. The “controlled inventory” values show emission levels after taking into account reductions attributable to adopted control measures, specifically, Rules 310, 310.01 and 316, and the Dust Action General Permit. *See* 2012 Five Percent Plan at p. 5-1 through 5-6; *see also*, p. 5-7, Table 5-3. “Annual reduction” is the mathematical difference between the prior year controlled inventory and the current year controlled inventory. “Cumulative reduction” is the running total of actual reductions starting with 2007 and continuing to the attainment year of 2012. The target required reduction is five percent of the base year (2007) inventory (2,961 tons per year) for the first year (2008), and additional reductions of five percent per year, until the attainment year of 2012.

The “controlled inventory” values reflect emission reductions due to improved compliance with Maricopa County Rules 310 (Fugitive Dust from Dust-Generating Operations), 310.01 (Fugitive Dust from Non-Traditional Sources of Fugitive Dust) and 316 (Nonmetallic

¹⁸ Table 5-2

¹⁹ Table 5-3

Mineral Processing) as well as the benefits of the Dust Action General Permit in 2012.²⁰

Maricopa County has been inspecting sources subject to these rules and tracking the extent to which the sources are complying with the regulations. Based on these data, MCAQD calculated rule effectiveness values for each rule. *See* 2012 Five Percent Plan, Appendix B, Chapter 3.

The 2012 Five Percent Plan demonstrates compliance with the five percent reduction requirement by comparing the cumulative reductions from the Dust Action General Permit and increased effectiveness of the Maricopa County rules against the total five percent reductions each year. Most of the required reductions were achieved in the early years of the plan. EPA encourages this approach as it accelerates the environmental benefits of the reductions.²¹

D. Reasonable Further Progress and Quantitative Milestones

Pursuant to sections 172 (c)(3) and 189(c)(1), the state must demonstrate RFP in the 2012 Five Percent Plan. We have explained in guidance that for areas such as the Maricopa County PM-10 Nonattainment Area where “the nonattainment problem is attributed to area type sources (e.g., fugitive dust, residential wood combustion, etc.), RFP should be met by showing annual incremental emission reductions sufficient generally to maintain linear progress towards attainment. Total PM-10 emissions should not remain constant or increase from 1 year to the next in such an area.” Addendum at 42015. Further, we have stated that, “in reviewing the SIP, EPA will determine whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective to ensure timely attainment of the PM-10 NAAQS.” *Id.* at 42016.

²⁰ EPA has approved Rules 310, 310.01 and 316 into the Arizona SIP. 75 FR 78167 (Dec. 15, 2010); 74 FR 58554 (Nov. 13, 2009). EPA has also approved Arizona statutory provisions related to the Dust Action General Permit. 78 FR 72579 (Dec. 3, 2013). EPA intends to propose action on the Dust Action General Permit in the near future.

²¹ This approach is consistent with the approach taken in a previous section 189(d) plan for the San Joaquin Valley. *See* 69 FR 5411 (Feb. 4, 2004) and 69 FR 30006 (May 25, 2004).

CAA section 189(c) further requires PM-10 attainment plans to contain quantitative milestones that are to be achieved every three years and that are consistent with RFP for the area. These quantitative milestones should consist of elements that allow RFP to be quantified or measured objectively. Specifically, states should identify and submit quantitative milestones that allow for evaluation of whether the plan is obtaining emission reductions adequate to achieve the NAAQS by the applicable attainment date. *Id.* at 42016.

The 2012 Five Percent Plan provides a reasonable further progress (RFP) demonstration in Chapter 6. *See* 2012 Five Percent Plan at 6-34 through 6-36. This analysis uses the controlled inventory totals by year as shown in Table 1 of this proposal. Specifically, the 2012 Five Percent Plan shows the following levels of PM-10, which decline between 2007 and 2012:

2007 -- 59,218 tons

2008 -- 49,231 tons

2009 -- 45,600 tons

2010 -- 44,062 tons

2011 -- 43,438 tons

2012 -- 43,130 tons

The analysis required for the five percent demonstration provides annual emission targets between the base year of 2007 and the attainment year of 2012. These annual totals show a steady downward trend in emissions that fulfills the milestone requirement of every three years. *See* 2012 Five Percent Plan at 6-36, Fig. 6-6. The trend is more sharply downward in the initial years because most of the improvements in rule effectiveness occurred in 2008. *Id.* at 35-36. EPA proposes to find that the 2012 Five Percent Plan has demonstrated reasonable further progress

and that by setting annual target emission levels, the plan has exceeded the requirement to provide for milestones every three years.

E. Contingency Measures

CAA section 172(c)(9) requires that attainment plans provide for the implementation of specific measures to be undertaken if the area fails to meet RFP requirements or fails to attain the PM-10 standard as projected in the plan. That section further requires that such measures are to take effect in any such case without further action by the state or EPA. The CAA does not specify how many contingency measures are necessary nor does it specify the level of emission reductions they must produce.

In guidance we have explained that the purpose of contingency measures is to ensure that additional emission reductions beyond those relied on in the attainment and RFP demonstrations are available immediately if there is a failure to meet RFP requirements or a failure to attain by the applicable statutory date. Addendum at 42014-42015. Contingency measures must consist of measures that the state is not otherwise relying on to meet other attainment plan requirements in the area. Thus, these additional emission reductions that will be achieved by the contingency measures ensure continued progress towards attainment while the state is revising the SIP to correct the failure to meet RFP or to attain. To that end, we recommend that contingency measures for PM-10 nonattainment areas provide emission reductions equivalent to one year's average increment of RFP. *Id.*

In interpreting the requirement that the contingency measures must "take effect without further action by the State or the Administrator," the General Preamble provides the following general guidance: "[s]tates must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public

hearings or legislative review.” General Preamble at 13512.²² Further, “[i]n general, EPA will expect all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure.” *Id.* The Addendum at 42015 reiterates this interpretation.

We have also interpreted section 172(c)(9) to allow states to implement contingency measures before they are triggered by a failure of RFP or attainment as long as those measures are intended to achieve emission reductions over and beyond those relied on in the attainment and RFP demonstrations. *Id.*; *see also, LEAN v. EPA*, 382 F.3d 575 (5th Cir. 2004).

The 2012 Five Percent Plan calculated the target for contingency measure reductions by subtracting the attainment year 2012 emissions (43,130 tons) from the 2007 baseline emissions (59,218 tons) and dividing by five years, yielding a target of 3,218 tons per year. 2012 Five Percent Plan at 6-37. EPA proposes to find that this method of calculating the target for contingency measure reductions is consistent with CAA requirements and EPA guidance and we propose to approve this target value for contingency measures.

The contingency measures are shown in Table 6-22 of the 2012 Five Percent Plan and are composed of various methods to reduce fugitive dust emissions from roads. The most significant reductions are from paving dirt roads and alleys; other reductions result from street sweeping of freeways, ramps and frontage roads, lower speed limits on dirt roads and alleys, and paving and stabilizing of unpaved shoulders. The measures were implemented in the years 2008 through 2012. These contingency measures are surplus to the measures used to demonstrate five percent reductions, RFP, and attainment. The method used to estimate emissions reductions from these

²² EPA elaborated on its interpretation of this language in section 172(c)(9) in the General Preamble in the context of the ozone standard: “The EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., would probably be needed before a measure could be implemented effectively.” General Preamble at 13512.

contingency measures are consistent with EPA recommended calculation methods for such measures and the total reductions exceed the target of one year of RFP. EPA proposes to approve the contingency measures described in the 2012 Five Percent Plan.

F. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or the timely achievement of interim milestones.

The 2012 Five Percent Plan specifies the maximum transportation-related PM-10 emissions allowed in the proposed attainment year, 2012, i.e., the MVEB of 54.9 metric tons per day (mtpd). 2012 Five Percent Plan at p. 6-43. This budget includes emissions from road construction, vehicle exhaust, tire and brake wear, dust generated from unpaved roads and re-entrained dust from vehicles traveling on paved roads. This budget is based on the 2012 emissions inventory that was projected from the 2008 PM-10 Inventory and reflects emission reductions that the plan expects will result from the control measures. The budget is consistent with the attainment, five percent and RFP demonstrations in the Plan.

On September 12, 2013, we announced receipt of the 2012 Five Percent Plan on the Internet and requested public comment on the adequacy of the MVEB by October 15, 2013. We did not receive any comments during the comment period. During that time we reviewed the MVEB and preliminarily determined that it met the adequacy criteria in 40 CFR 93.118(e)(4)

and (5). We sent a letter to ADEQ and MAG dated November 22, 2013 stating that the 2012 motor vehicle PM-10 emissions budget for the Maricopa area in the submitted plan was adequate. Our finding was published in the *Federal Register* on December 5, 2013, effective December 20, 2013. 78 FR 73188.

Now that EPA has thoroughly reviewed the submitted SIP, we are proposing to approve the MVEB for 2012 as part of our approval of the 2012 Five Percent Plan. EPA has determined that the MVEB emission target is consistent with emission control measures in the SIP and the attainment demonstration, five percent demonstration and RFP demonstration. The details of EPA's evaluation of the MVEB for compliance with the budget adequacy criteria of 40 CFR 93.118(e) is provided in a separate document included in the docket of this rulemaking.²³

G. Adequate Legal Authority

Section 110(a)(2)(E)(i) of the Clean Air Act requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have adequate personnel, funding and authority under state law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (section 51.230-232) and for resources in 40 CFR 51.280.

States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. These requirements are addressed in cover letters and submittal package for the 2012 Five Percent Plan.²⁴

MAG derives its authority to develop and adopt air quality plans, including the 2012 Five Percent Plan, from ARS 49-406 and from a February 7, 1978 letter from the Governor of

²³ See "Transportation Conformity Adequacy Review" by Greg Nudd, EPA Region 9, November 11, 2013.

²⁴ See Completeness Determination Checklist (EPA, July 2, 2012) for details on the location of the documentation of authority.

Arizona designating MAG as responsible for those tasks.²⁵ ADEQ is authorized to adopt and submit the 2012 Five Percent Plan by ARS 49-404 and ARS 49-406. MCAQD implements air quality programs within Maricopa County. Pinal County Air Quality Control District implements air quality programs within Pinal County.

For the reasons discussed above, we propose to find that the requirements of section 110(a)(2)(E) and related regulations have been met with respect to legal authority.

IV. Summary of Proposed Actions

EPA is proposing to approve the 189(d) plan for the Maricopa County (Phoenix) PM-10 nonattainment area. Specifically, we propose to approve the following:

(A) the 2008 baseline emissions inventory and the 2007, 2009, 2010, 2011 and 2012 projected emission inventories as meeting the requirements of CAA sections 172(c)(3);

(B) the attainment demonstration as meeting the requirements of CAA sections 189(d) and 179(d)(3);

(C) the 5% demonstration as meeting the requirements of CAA section 189(d);

(D) the reasonable further progress and quantitative milestone demonstrations as meeting the requirements of CAA section 172(c)(2) and 189(c);

(E) the contingency measures as meeting the requirements of CAA sections 172(c)(9);
and

(F) the Motor Vehicle Emissions Budget as compliant with the budget adequacy requirements of 40 CFR 93.118(e).

²⁵ Letter from Wesley Bolin, Governor of Arizona, to Douglas M. Costle, Administrator of EPA, February 7, 1978. 2012 Five Percent Plan, Appendix E, Exh. 2.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal approval of the SIP does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C.

7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between

the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule. However, even though EPA is acting

on a State plan, and that plan does not apply in Indian Country, there are four tribes located within the PM-10 nonattainment area, several of which have imposed particulate control measures of their own in order to reduce PM-10 concentrations. EPA informed tribal environmental staff regarding the proposed approval so that the tribes could inform their leadership and participate in the public comment process if desired.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

H. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States. The Executive Order has informed the development and implementation of EPA’s environmental justice program and policies. Consistent with the

Executive Order and the associated Presidential Memorandum, the Agency's environmental justice policies promote environmental protection by focusing attention and Agency efforts on addressing the types of environmental harms and risks that are prevalent among minority, low-income and Tribal populations.

This action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or Tribal populations because the action proposed increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

I. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 14, 2014

Alexis Strauss,
Acting Regional Administrator,
Region IX.

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